No. 859

MAR 23 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

UNION PACIFIC RAILROAD COMPANY, *Petitioner,*

v.

THE UNITED STATES.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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INDEX

	Page
Opinion below	1
Jurisdiction	2
Questions presented	2
Statutes involved	2
Statement	4
Reasons for granting the writ	6
Conclusion	8

CASES CITED

Canned Foods, Inc. v. United States, 146 F. Supp. 407, 472	7
Clapp v. United States, 127 C. Cls. 505	5
Eversharp, Inc. v. United States, 129 C. Cls. 772	5
Midstate etc. Co. v. Pennsylvania R. Co., 320 U.S. 356	7
Northern Pacific R. Co. v. United States, 85 C. Cls. 42	5
Pan American World Airways v. United States, 129 C. Cls. 53	5
United States v. Lindsay, 346 U.S. 568	2, 5, 6, 7

STATUTES CITED

Act of Sept. 18, 1940, 54 Stat. 955 (Transportation Act of 1940)	3
Act of June 29, 1948, 62 Stat. 1070; 15 U. S. Code 714b(c)	2, 3
Act of June 7, 1949, 63 Stat. 154, 156; 15 U. S. Code 714b(c)	3
Title 28, U. S. Code, sec. 1255(1)	2
Title 28, U. S. Code, sec. 1491	5

APPENDIX

Opinion of Court of Claims	1a

IN THE

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No.

UNION PACIFIC RAILROAD COMPANY, *Petitioner,*

v.

THE UNITED STATES.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Union Pacific Railroad Company prays that a writ of certiorari be issued to review the judgment of the United States Court of Claims entered on January 16, 1957, in *Union Pacific Railroad Company* v. *United States,* No. 506-53.

OPINION BELOW

The opinion of the Court of Claims is reported in 147 F. Supp. 483, and is printed in the Appendix hereto, pp. 1a-6a.

JURISDICTION

Final judgment dismissing the petition was entered on January 16, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1255 (1).

QUESTIONS PRESENTED

The case involves the effect and application of Section 4(c) of the Commodity Credit Corporation charter act of 1948[1] and Section 322 of the Transportation Act of 1940[2] and the decision and opinion of this Court in *United States* v. *Lindsay,* 346 U. S. 568.

The questions presented are:

1. Whether—in view of *United States* v. *Lindsay,* 346 U. S. 568—Section 4(c) of the Commodity Credit Corporation charter act must be held to have extinguished the liability on "stale claims" as well as bar suit thereon; and

2. If that is so, whether overpayments of transportation charges paid by Commodity Credit Corporation in 1943 and 1944, asserted by the General Accounting Office more than nine years later, may be recovered by the United States pursuant to Section 322 of the Transportation Act of 1940.

STATUTES INVOLVED

The pertinent provisions of Section 4(c) of the Commodity Credit Corporation charter act and Section 322 of the Transportation Act of 1940 are as follows:

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[1] 62 Stat. 1070, as amended 63 Stat. 154; 15 U.S.C. 714b (c).

[2] 54 Stat. 955; 49 U.S.C. 66.

Act of June 29, 1948, 62 Stat. 1070, as amended by Act of June 7, 1949, 63 Stat. 154, 156; 15 U.S. Code, Sec. 714b (c):

> "No suit by or against the Corporation shall be allowed unless (1) it shall have been brought within six years after the right accrued on which suit is brought."
>
> * * *
>
> "Any suit by or against the United States as the real party in interest based upon any claim by or against the Corporation shall be subject to the provisions of this subsection (c) to the same extent as though such suit were by or against the Corporation, except that (1) any such suit against the United States based upon any claim of the type enumerated in title 28, section 1491, of the United States Code, may be brought in the United States Court of Claims, and (2) no such suit against the United States may be brought in a district court unless such suit might, without regard to the provisions of this Act, be brought in such court."

Act of Sept. 18, 1940, 54 Stat. 955; 49 U.S. Code, Sec. 66:

> "Payment for transportation of the United States mail and of persons or property for or on behalf of the United States by any common carrier subject to the Interstate Commerce Act, as amended, or the Civil Aeronautics Act of 1938, shall be made upon presentation of bills therefor, prior to audit or settlement by the General Accounting Office, but the right is hereby reserved to the United States Government to deduct the amount of any overpayment to any such carrier from any amount subsequently found to be due such carrier."

STATEMENT

In 1943 and 1944 the petitioner performed transportation service for Commodity Credit Corporation, an agency of the United States, by carrying a number of shipments of foodstuffs. The transportation charges were billed on the basis of the applicable commercial rates and were promptly paid.

In April 1953—nearly ten years later—the General Accounting Office notified the railroad that an audit disclosed overpayments in the amount of the difference between the applicable commercial rates paid by Commodity Credit Corporation and the land-grant rates which the General Accounting Office held should have been applied.[3] Refund of the asserted overpayments was demanded within 60 days, failing which deductions would be made from other bills due the railroad, pursuant to Section 322 of the Transportation Act of 1940, 49 U.S. Code 66. Previously, in March 1953, the railroad had notified the General Accounting Office—referring to similar demands for refunds—that liability for the asserted overpayments was not conceded and that "these refunds, and others covering similar movements" were being made under protest and reserving the right to reclaim the amounts refunded, to prevent deductions from other bills and the ensuing work in connection therewith.

---

[3] Land-grant rates are lower net rates, derived from the applicable commercial rates by taking land-grant deductions for land-grant mileage, which were in effect prior to October 1, 1946, on "military or naval property of the United States moving for military or naval and not for civil use." Section 321 of the Transportation Act of 1940, 49 U.S. Code 65; repealed by Act of December 12, 1945, 59 Stat. 605, effective October 1, 1946.

The refunds involved in this case amounting to $3,697.78 were made in June 1953. Suit to recover the amount refunded was filed in August 1953.

The Court of Claims held that the recovery by the United States of the asserted overpayments was authorized by Section 322 of the Transportation Act of 1940, that Section 4(c) of the Commodity Credit Corporation charter act should not be construed as repealing that section of the Transportation Act,[4] and that Congress did not, by Section 4(c), mean more than it said, i.e. that no suit could be brought upon claims more than six years old.

JURISDICTION

The jurisdiction of the Court of Claims is based on Section 1491, Title 28, U. S. Code. The plaintiff's claim is for the recovery of money unlawfully exacted from it on the purported authority of the Transportation Act of 1940, as the result of an erroneous interpretation by the General Accounting Office of Section 4(c) of the Commodity Credit Corporation charter act and Section 322 of the Transportation Act of 1940.

Clapp v. *United States,* 127 C. Cls. 505,
Eversharp, Inc. v. *United States,* 129 C. Cls. 772,
Pan American World Airways v. *United States,* 129 C. Cls. 53, 55-56, 61,
Northern Pacific R. Co. v. *United States,* 85 C. Cls. 42.

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[4] The railroad did not contend that there was a repeal of Section 322 of the Transportation Act, but that *with respect to transportation charges paid by Commodity Credit Corporation* the charter act of 1948 carved out an exception to the general rule. As this court said in *United States* v. *Lindsay:* "Congress has unquestioned power to bar recovery on Government claims if it sees fit."

REASONS FOR GRANTING THE WRIT

The questions presented are important in the disposition of a number of similar pending cases and a large number of similar claims.

In the petition for certiorari filed by the Government in *United States* v. *Lindsay,* No. 832, October Term 1952, it was stated:

> "We are also informed that the General Accounting Office is now engaged in reauditing the transportation charges paid by Commodity Credit Corporation during the war-years 1943 through 1946, and collections have already been made by that office and deposited to the capital funds of the Corporation in the amount of approximately $1,500,000 representing overpayments by the Delaware Corporation in 1943 and 1944. It is estimated that the reaudit, when complete, will disclose overpayments aggregating between $7,000,000 and $8,000,000, which the Corporation will seek to collect either through suit or by offset. Collections have already been made, in many instances, by means of deductions from bills presented by carriers for transportation charges on shipments recently made by other governmental agencies. If any of these offsets are disputed, the carrier may file suit in a district court or, if the claim exceeds $10,000, in the Court of Claims. Since the defense to such actions would generally be a counterclaim for these overpayments made during 1943 to 1946, this defense would be barred if Section 4(c) were held to be retroactive. The question presented by this petition has, therefore, a large and continuing importance."

Certiorari was granted, 346 U.S. 810, and the judgment was affirmed, 346 U.S. 568. In the opinion of this Court it was said (p. 571):

> "The Government has used the Commodity Credit Corporation in business transactions since 1933. Probably many claims have accrued in the intervening years. Maybe others, like this one, are for comparatively small amounts. All, *whether large or small,* could have been sued on as they arose. We think that Congress might well have believed it wise to bar *all stale claims* by the Government against its agents and others who dealt with it in the past." (Italics added.)

The decision of the Court of Claims is inconsistent with the *ratio decidendi* and the opinion of this Court in *United States* v. *Lindsay,* and with the trend of decisions of this Court and the Court of Claims that statutes such as the Commodity Credit Corporation charter act should be construed as extinguishing the liability on stale claims as well as barring suit thereon. As this Court said in *Midstate Horticultural Co.* v. *Pennsylvania R. Co.,* 320 U. S. 356:

> "The purport of the decisions is that Congress intended when the period has run, to put an end to the substantive claim and the corresponding liability. The cause of action, the very foundation for relief, is extinguished."

And as the Court of Claims said recently in another case, decided July 12, 1956, *Canned Foods, Inc.* v. *United States,* 146 F. Supp. 470, 472:

> "We think that there is merit in another of plaintiff's grounds for the dismissal of the Government's counterclaim. It says that the limitation stated in the False Claims Act is one that, when it expires, bars not only the remedy but the right, and therefore cannot be tolled. In *United States* v. *Borin,* 209 F. 2d 145, C.C.A. 5, the court so held, against an assertion by the Government that it had not

discovered the falsity of the claim until after the six-year period had expired. The *Borin* case relied in turn upon *Phillips* v. *Grand Trunk Western Railway Co.*, 236 U.S. 662. See also *The Harrisburg*, 119 U.S. 199, and *Midstate Horticultural Co.* v. *Pennsylvania Railroad Co.*, 320 U.S. 356.

"Cases involving Federal statutes which have been so interpreted are collected in Judge Yankwich's opinion in *Adams* v. *Albany*, D. C. S. D. Cal., 80 F. Supp. 876, 880."

CONCLUSION

For the reasons stated it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

LAWRENCE CAKE
RAYMOND A. NEGUS
Counsel for Petitioner

APPENDIX

APPENDIX

APPENDIX

IN THE UNITED STATES COURT OF CLAIMS

No. 506-53

(Decided January 16, 1957)

UNION PACIFIC RAILROAD COMPANY

v.

THE UNITED STATES

Mr. Lawrence Cake for the plaintiff. *Mr. Raymond A. Negus* was on the brief.

Mrs. Pauline B. Heller, with whom was *Mr. Assistant Attorney General George Cochran Doub*, for defendant. *Mr. Paris T. Houston* was on the brief.

Opinion

MADDEN, *Judge*, delivered the opinion of the court:

In 1943 and 1944 the plaintiff railroad carried goods for the Commodity Credit Corporation, which was an agency of the United States. The railroad submitted bills for the carriage and the CCC paid the bills as submitted. The bills were excessive, in that they did not give the CCC the benefit of land-grant rates to which it was entitled.

In 1953 the Government notified the plaintiff that an audit showed that the plaintiff had been overpaid, and requested the plaintiff to refund the excess collected. The plaintiff did so, and now sues to recover the amount so refunded, on the ground that the Government's right to a return of the excess charges collected from it had been barred by a statute of limitations at the time it requested and received the return of the excess from the plaintiff.

Section 322 of the Transportation Act of 1940, 54 Stat. 955, 49 U. S. C. 66, provides that the Government shall pay freight bills when presented, without waiting to audit them, but that it shall have the right, when it does later make an audit, to deduct any overpayment disclosed by the audit from any amount subsequently found to be due the railroad. If this was the only statute involved, it would be plain that the Government had the right in 1953 to pay itself out of money which it otherwise owed the plaintiff for transportation services, for the excess charges which it had paid the plaintiff in 1943 and 1944, and that the plaintiff, having refunded the money instead of causing the Government to pay itself out of other money which it owed the plaintiff, could not recover what it refunded.

The plaintiff urges, however, that there is another pertinent statute which requires a different conclusion in cases where the Government agency involved is the Commodity Credit Corporation. The CCC was originally a Delaware corporation, though an agency of the United States. By the act of June 29, 1948, 62 Stat. 1070, as amended by 63 Stat. 154, 15 U.S.C. 714, herein called the Charter Act, a Federal corporation of the same name was created, which was to have the assets and rights and be subject to the liabilities of the former Delaware corporation. Section 714b(c) of Title 15 U. S. C. provides that the CCC

> May sue and be sued, but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Corporation or its property . . . No suit by or against the Corporation shall be allowed unless (1) it shall have been brought within six years after the right accrued on which suit is brought, . . . The defendant in any suit by or against the Corporation may plead, by way of set-off or counterclaim, any cause of action, whether arising out of the same transaction or not, which would otherwise be barred by such limitation if the claim upon which the defendant's cause of action is based had not been barred prior to the date that the plaintiff's cause of action arose: *Provided,*

> That the defendant shall not be awarded a judgment on any such set-off or counterclaim for any amount in excess of the amount of the plaintiff's claim established in the suit . . . Any suit by or against the United States as the real party in interest based upon any claim by or against the Corporation shall be subject to the provisions of subsection (c) of this section to the same extent as though such suit were by or against the Corporation, except that (1) any such suit against the United States based upon any claim of the type enumerated in section 1491 of Title 28, may be brought in the United States Court of Claims, . . .

The plaintiff says that this statute barred the Government from suing the plaintiff to recover the excess charges, and also barred the Government from setting off the excess charges against money otherwise due the plaintiff. That being so, the plaintiff says that since it refunded the excess charges at the Government's request, and because of the Government's threat of making the setoff, it can recover in this suit the amount which it so refunded.

The Government says, for one of its defenses, that regardless of the merits of these contentions of the plaintiff, the plaintiff cannot recover because it made the refund voluntarily, and without even a protest which was specifically directed to this payment. The question whether or under what circumstances a payment voluntarily made of money not legally owing gives rise to a right to recover the payment is an interesting and difficult one, but we do not find it necessary to resolve that question in this case.

We construe the Charter Act of the CCC as not repealing section 322 of the Transportation Act of 1940. The plaintiff does not, of course, urge that the provision of that section requiring the Government to pay freight bills upon presentation, without waiting for an audit, is repealed. That provision is of great benefit to the railroads, enabling them to collect their bills without delay, and have the use of the money during the time taken by the Government for its

audit. With that provision of section 322 in effect, the Government would be in a disadvantageous position if it were denied the right of setoff unless it succeeded in making its audit within six years. We are not advised as to the time normally required, or taken for such audits, but the fact that in the instant case it was not completed until nine years after the bills presented by the railroad had been paid indicates that six years is not the maximum time required or taken.

The Government points to section 4(k) of the Charter Act, 15 U. S. C. 714b(k) which gives to the CC authority "to make final and conclusive settlement and adjustment of any claims by or against the Corporation." This section, unlike section 4(c) relating to suits, fixes no time limit beyond which such administrative settlements cannot be made. On February 23, 1951, the Attorney General rendered an opinion, 41 Op. Attorney General, No. 15, that the CCC could legally pay claims on which it could no longer be sued because of the time limit for suits set in section 4(k). Shortly thereafter the CCC announced a policy for the settlement, adjustment and payment of claims against it provided they were filed within ten years after accrual.

An individual debtor, who is no longer liable to suit because the statute of limitations has run against the creditor's claim, may, of course, still pay the debt, because it is the honorable thing to do, or to conserve his reputation for fair dealing and keep his credit unimpaired. But, whether he pays or not is a purely personal decision for him to make. Where, however, Congress has set a time limit of six years for suits against the United States as it has in 28 U. S. C. 2501, but has also provided, 31 U. S. C. 71a, 237, that claims against the United States may be filed in the General Accounting Office at any time within ten years, it must have meant that claims time-barred from suit should nevertheless receive the same consideration on their merits by the General Accounting Office as if an adverse decision by that agency might be followed by a suit. Similarly,

section 4(k) of the CCC Charter Act, as construed by the Attorney General, did not contemplate that the CCC should, at its caprice, pay or refuse to pay claims filed with it which were time-barred from suit by section 4(c). But we think that Congress could hardly have intended by section 4(k) that the CCC should consider on its merits and pay a claim against it, time-barred from suit, and disregard a charge which it had against the claimant, similarly time-barred from suit.

The above discussion seems to us to lead to the conclusion that Congress did not, by section 4(c) mean more than it said, which was that no suit could be brought upon claims more than six years old. We think it did not intend to disturb the normal process of administrative settlement, particularly the one expressly established by section 322 of the Transportation Act of 1940. There would be no equity whatever in an arrangement whereby a railroad, if it had a claim against the Government of a kind which had not, under the mandate of section 422, been paid upon presentation, and more than six years had elapsed since its accrual, would have a right to have its claim considered on its merits by the General Accounting Office within ten years, but that office would have no right to set off a claim of the CCC, time-barred from suit by section 4(c) of the Charter Act.

The plaintiff cites the decision of the Supreme Court of the United States in *United States* v. *Lindsay*, 346 U. S. 568. The question at issue in that case was whether the time limitation on claims of the CCC, set by section 4(c) of the Charter Act in 1948 began to run from the date of that statute, or from the earlier date of the accrual of the claims. The plaintiff points out that the Government, in its petition for *certiorari* in that case urged that if the lower court decision that the limitation period began to run from the earlier date was allowed to stand, some seven or eight million dollars in overcharges by railroads in 1943 and 1944 which the CCC would seek to collect by suit or offset, and many such amounts which had already been collected by offset,

would be lost to the Government, since the railroads could plead the statute if sued, and could sue the Government and recover the amount of the offsets if the Government had collected the overcharges by offset. The Supreme Court decided the *Lindsay* case against the Government. The issue which we have before us was not the issue in that case. The Government's argument in that case as to what might be a collateral consequence of the affirmance of the judgment in that case does not make that decision a decision of our question.

The plaintiff's petition will be dismissed.

It is so ordered.

LARAMORE, *Judge;* WHITAKER, *Judge;* LITTLETON, *Judge;* and JONES, *Chief Judge,* concur.

Findings of Fact

The court, having considered the evidence, the report of Commissioner Marion T. Bennett, and the briefs and arguments of counsel, makes findings of fact as follows:

1. Plaintiff, a corporation organized and existing under the laws of the State of Utah, is a common carrier by railroad over its own lines and jointly with other common carriers.

2. In 1942 and 1943, plaintiff performed transportation service for defendant on bills of lading issued by the Commodity Credit Corporation, an agency of the defendant, by carrying a number of shipments of linseed oil, evaporated milk, salted bellies, cured bellies, and fatback squares to destination points on plaintiff's lines.

3. Upon completion of the transportation service, plaintiff, as the final and delivering carrier, billed charges to the defendant in a total amount of $7,805.87. The charges so billed were paid by the defendant's disbursing officers at various times in 1943 and 1944. The charges billed and paid

related to the shipments covered by Government bills of lading, as follows:

Government bills of lading	Dates of shipment
A-3299238	10/14/43
A-3200043	5/15/43
A-3031749	10/20/42
A-3031777	11/20/42
A-3217133	4/28/43
A-3031743	11/20/42
A-3031413	11/16/42
A-3217152	5/ 5/43
A-3195181	5/11/43
A-3365161	9/12/43
A-3365162	9/12/43

4. Thereafter, in April 1953, plaintiff received notices from the General Accounting Office, stating that upon re-audit of the plaintiff's bills overpayments had been determined by applying land-grand deductions and demanding refunds of the overpayments within 60 days, failing which, deductions would be made from other bills due the plaintiff to recover the overpayments. In June 1953, plaintiff made refunds to the defendant amounting to $3,697.78.

5. On March 9, 1953, the following letter was sent by T. J. Cummins, auditor of freight accounts, Union Pacific Railroad Company, to H. O. Hoagland, chief, transportation division, General Accounting Office:

> Refund vouchers have been issued for the following claims of the Commodity Credit Corporation for land grant rates on lend-lease shipments:

B/L date	B/L No.	UP bill	Amount	T-GAO file
11/14/42	A-3003581	O-19825	$449.21	R/A 36981
6/ 3/43	A-2769413	IO-27308	438.14	R/A 74292
11/21/42	A-3023918	O-14507	312.45	R/A 18462
11/16/42	A-3009706	O-14546	445.98	R/A 18372
11/14/42	A-3009705	O-13707	450.76	R/A 9265
11/14/42	A-3003575	O-14530	438.02	R/A 9700
11/14/42	A-3009710	O-14512	438.86	R/A 18413

It is pointed out that these shipments and others on which similar refunds have been made moved in 1942 and 1943. We do not concede liability for the Union Pacific and participating carriers in connection with shipments of this nature.

In order to prevent arbitrary deductions by your office and the ensuing work in connection therewith, we are making these refunds, and others covering similar movements, under protest and we reserve the right for the Union Pacific and participating carriers to reclaim any or all of the amounts refunded in connection with shipments of this nature, which may at a later date be found due the Union Pacific and participating carriers.

6. Another letter was sent by plaintiff to defendant on May 27, 1954, as follows:

The Union Pacific has been paying under protest claims for refund of land grant on Commodity Credit Corporation shipments. In Mr. T. J. Cummins' letter to you of March 9, 1953, it was pointed out that the Union Pacific does not concede liability for land grant in connection with those shipments, but was making refunds in order to prevent deductions by your office and ensuing work in connection therewith, and that we reserved the right to reclaim any or all amounts refunded in connection with those and similar shipments.

This is to advise that the Union Pacific has decided that it will make no further refunds of amounts claimed for land grant deductions on those and similar shipments of the Commodity Credit Corporation.

7. At the time the service in question was performed in 1942 and 1943, the Commodity Credit Corporation, a corporation organized under the laws of Delaware, was an agency of the United States pursuant to Executive Order No. 6340. Subsequently, the corporation was succeeded by and all its rights, privileges, powers, duties, and liabilities were transferred to a corporation of the same name—Commodity Credit Corporation—created by the act of June 29, 1948 (62 Stat. 1070, 63 Stat. 154, 15 U. S. C. § 714).

8. No action, suit or process is pending in any other court on account of the plaintiff's claim to recover the refunds. No action has been brought in Congress or by any of the executive departments or agencies, other than as herein stated. The plaintiff is the owner of the claim and no assignment or transfer of the whole or any part thereof or any interest therein has been made by the plaintiff.

Conclusions of Law

Upon the foregoing findings of fact, which are made a part of the judgment herein, the court concludes that as a matter of law the plaintiff is not entitled to recover, and the petition is therefore dismissed.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	1
Statutes involved	2
Statement	4
Argument	7
Conclusion	10

CITATIONS

Cases:

DuPont de Nemours & Co. v. *Davis*, 264 U. S. 459 — 9

United States v. *Lindsay*, 346 U. S. 568 — 10

United States v. *Western Pacific Co.*, 342 U. S. 59 — 8, 9

Statutes:

Commodity Credit Corporation Charter Act of June 29, 1948, 62 Stat. 1070, as amended, 15 U. S. C. 714b:

Section 4 (c) — 3, 4, 5, 6, 9, 10

Section 4 (k) — 4, 6, 9

Transportation Act of September 18, 1940, Section 322, 54 Stat. 955, 49 U. S. C. 66 — 2, 4, 5, 7, 8, 9

28 U. S. C. 2501 — 6, 10

31 U. S. C. 71a — 6, 10

31 U. S. C. 237 — 6, 10

Miscellaneous:

41 Op. Atty. Gen. No. 15 — 10

423379—57

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 859

UNION PACIFIC RAILROAD COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the United States Court of Claims (Pet. App. 1a–6a) is reported at 147 F. Supp. 483.

JURISDICTION

The judgment of the Court of Claims was entered on January 16, 1957 (Pet. App. 9a). The petition for a writ of certiorari was filed on March 26, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1255 (1).

QUESTION PRESENTED

In 1943 and 1944 the carrier performed certain transportation services for the Commodity Credit Corporation. In computing its charges, the carrier

failed to give Commodity the benefit of land-grant rates to which it was concededly entitled. Pursuant to Section 322 of the Transportation Act of 1940, the Government promptly paid the bills as presented. The overcharges were discovered on post audit and were refunded in 1953 by the carrier upon the Government's request. The carrier thereafter brought suit under the Tucker Act to recover the refund.

The question presented is whether the Government's retention of the administrative refund of the overcharges is precluded by the provision in Section 4 (c) of the Commodity Credit Corporation Charter Act of 1948, as amended, requiring that suit on claims by or against Commodity be brought within six years following the accrual of the claim.

STATUTES INVOLVED

Section 322 of the Transportation Act of September 18, 1940, 54 Stat. 955, 49 U. S. C. 66, provides as follows:

> Payment for transportation of the United States mail and of persons or property for or on behalf of the United States by any common carrier subject to the Interstate Commerce Act, as amended, or the Civil Aeronautics Act of 1938, shall be made upon presentation of bills therefor, prior to audit or settlement by the General Accounting Office, but the right is reserved to the United States Government to deduct the amount of any overpayment to any such carrier from any amount subsequently found to be due such carrier.

Section 4 of the Commodity Credit Corporation Charter Act of June 29, 1948, 62 Stat. 1070, as

amended, 15 U. S. C. 714b, provides in relevant part as follows:

> The Corporation—
>
> * * * * *
>
> (c) May sue and be sued, but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Corporation or its property.* * * No suit by or against the Corporation shall be allowed unless (1) it shall have been brought within six years after the right accrued on which suit is brought,* * *. The defendant in any suit by or against the Corporation may plead, by way of set-off or counterclaim, any cause of action, whether arising out of the same transaction or not, which would otherwise be barred by such limitation if the claim upon which the defendant's cause of action is based had not been barred prior to the date that the plaintiff's cause of action arose: *Provided,* That the defendant shall not be awarded a judgment on any such set-off or counterclaim for any amount in excess of the amount of the plaintiff's claim established in the suit.* * * Any suit by or against the United States as the real party in interest based upon any claim by or against the Corporation shall be subject to the provisions of subsection (c) of this section to the same extent as though such suit were by or against the Corporation, except that (1) any such suit against the United States based upon any claim of the type enumerated in section 1491 of Title 28, may be brought in the United States Court of Claims,* * *.
>
> * * * * *

(k) Shall have authority to make final and conclusive settlement and adjustment of any claims by or against the Corporation or the accounts of its fiscal officers.

STATEMENT

This action was instituted by petitioner, Union Pacific Railroad Company, under the Tucker Act to recover certain refunds of overcharges in connection with transportation services rendered to the Commodity Credit Corporation. The single asserted basis of recovery was that, at the time the refunds were made, the Government's right administratively to recoup the overcharges was barred by the limitation provisions of Section 4 (c) of the Commodity Credit Corporation Charter Act of 1948, *supra,* pp. 2–3. The court below held Section 4 (c) inapplicable and dismissed the action. The pertinent facts may be summarized as follows:

During 1942 and 1943, petitioner and its connecting carriers transported certain food shipments under bills of lading issued by the Commodity Credit Corporation (Pet. App. 6a). Following the rendition of these services, petitioner, as the terminal carrier, submitted bills in the total amount of $7,805.87 (Pet. App. 6a, 7a). Pursuant to Section 322 of the Transportation Act of 1940, *supra,* p. 2, these bills were paid as submitted, without a prior determination as to their correctness (Pet. App. 6a). Subsequently, the post-audit by the General Accounting Office disclosed that petitioner had overcharged the Government by failing to apply land-grant rates to which Commodity had been entitled (Pet. App. 7a).

In April 1953, the General Accounting Office requested a refund of the overpayments and advised petitioner that, unless restitution was made within 60 days, the Government would make deductions in the payment of other bills rendered by the carrier, in conformity with Section 322 (Pet. App. 7a). In June 1953, petitioner refunded $3,697.78 (the amount of the overcharges) (Pet. App. 7a).

On August 20, 1953, petitioner brought this action. In its complaint, petitioner did not allege that its bills, paid without prior audit under Section 322, were correct. To the contrary, petitioner's position was that, although it had overcharged the Government, it was nevertheless entitled to recover its refund. Its theory was that, because the completion of the audit of its excessive bills and the resultant request for refund did not take place until more than six years after the bills had been paid, Section 4 (c) of the Commodity Credit Corporation Charter Act, *supra,* pp. 2–3, barred receipt of restitution by the Government.

On January 16, 1957, the Court of Claims rejected petitioner's position and dismissed the action (Pet. App. 1a–6a). Speaking for a unanimous court, Judge Madden recognized at the outset (1) that the refund, following the disclosure of overcharges on the post-audit of petitioner's bills, was an integral part of the administrative settlement procedure contemplated by Section 322 of the Transportation Act; (2) that Section 322 establishes no time limitation with respect to recoupment of excessive charges; and (3) that, in view of the provision of the Section requiring payment of transportation bills upon presentation, the Govern-

ment would be in a disadvantageous position were it denied the right of administrative recoupment unless the audit were completed within six years (Pet. App. 2a, 4a). In the latter connection, the court pointed to the obvious benefit that carriers derive from prompt payment of their bills without audit, as well as to the fact that the post-audit contemplated by Section 322 may require more than six years (Pet. App. 3a–4a).

Turning then to the question as to whether, in circumstances where the transportation services involved had been rendered on behalf of Commodity, Section 4 (c) of the Charter Act nevertheless imposed a limitation on the administrative recoupment contemplated by Section 322, the court determined the answer to be in the negative (Pet. App. 5a). The court noted that Section 4 (k) of the Charter Act, *supra,* p. 4, which relates to the settlement and adjustment of claims by or against Commodity, does not place a time limit on such action, and that, as a matter of policy, Commodity settles, adjusts, and pays claims against it filed within ten years after accrual (Pet. App. 4a). The court further noted that, while the Tucker Act imposes a six-year limitation with respect to the institution of suit on claims against the United States (28 U. S. C. 2501), the claimant has ten years in which to file his claim with the General Accounting Office (31 U. S. C. 71a, 237). The court took these provisions to mean that the General Accounting Office and Commodity are under a legislative mandate to consider and pay meritorious claims administratively, even though suit thereon would be time-barred (Pet. App. 4a–5a). This being so, the court reasoned,

Congress could not have intended that, at the same time, Commodity was not to avail itself of established administrative procedures with respect to obtaining payment on its own claims which likewise could not have been sued upon (Pet. App. 5a).

On the basis of these considerations, the court concluded that (Pet. App. 5a):

> * * * Congress did not, by section 4 (c) mean more than it said, which was that no suit could be brought upon claims more than six years old. We think it did not intend to disturb the normal processes of administrative settlement, particularly the one expressly established by section 322 of the Transportation Act of 1940. There would be no equity whatever in an arrangement whereby a railroad, if it had a claim against the Government of a kind which had not, under the mandate of section [322], been paid upon presentation, and more than six years had elapsed since its accrual, would have a right to have its claim considered on its merits by the General Accounting Office within ten years, but that office would have no right to set off a claim of the CCC, time-barred from suit by section 4 (c) of the Charter Act.

ARGUMENT

By this action, petitioner seeks to recover sums which it refunded to the Government under Section 322 of the Transportation Act of 1940, *supra,* p 2, after a post-payment audit of its bills for transportation services rendered to the Commodity Credit Corporation revealed overcharges. Petitioner does not contest that these bills were excessive, asserting merely

that administrative recoupment of the overcharges was barred by limitations. The holding of the court below to the contrary is clearly correct and does not conflict with prior decisions of this or other courts. Accordingly, further review is not warranted.

1. Prior to 1940, payment of transportation bills was not made until their correctness was established. This practice—which is still followed as to all non-carrier claimants—frequently resulted in substantial delay in payment. In 1940, Section 322 was enacted to provide for payment of transportation bills without delay, *i. e.*, "prior to audit or settlement by the General Accounting Office." However, in order to insure that if post-audit revealed an overcharge, the Government would be able to put itself in the same position that it would have occupied had it discovered the error by a pre-audit, Section 322 went on to reserve to the Government "the right * * * to deduct the amount of any overpayment to any such carrier from any amount subsequently found to be due such carrier."

Thus, Section 322 was designed, on the one hand, to give the carrier the benefit of immediate payment, and, on the other, to enable the Government to put itself in *statu quo ante* with respect to those matters as to which subsequent audit showed error or probability of error. Cf. *United States* v. *Western Pacific Co.*, 352 U. S. 59, 74. This desire to insure that the prompt payment of transportation bills would not have a prejudicial effect upon the public treasury sufficiently explains, we think, the absence of a limitations provision in Section 322. As the court below observed, were administrative recoupment barred unless effectu-

ated during the period for which petitioner here contends, the Government would be unable to protect itself effectively against the retention by the carrier of excessive and unlawful charges. Cf. *United States* v. *Western Pacific R. Co., supra* at 74, fn. 17.

2. Petitioner urges that, even though there is no limitation upon administrative recoupment of overcharges under Section 322, Section 4 (c) of the Commodity Credit Corporation Charter Act, *supra,* pp. 2–3, imposes a six year time limit upon such recoupment where the transportation services had been performed for Commodity. While tacitly conceding that Section 4 (c) in terms refers solely to *suits* by or against Commodity (or the United States as the real party in interest), petitioner insists that the Section must be read as also encompassing administrative settlements.

It is axiomatic that "[s]tatutes of limitations sought to be applied to bar rights of the Government, must receive a strict construction in favor of the Government." *DuPont de Nemours & Co.* v. *Davis,* 264 U. S. 456, 462, and cases cited therein. Even apart from this consideration, however, petitioner's endeavor to broaden the scope of Section 4 (c) beyond the Congressional terms is unjustified. As the court below observed (Pet. App. 4a), Congress in Section 4 (k) of the Charter Act, *supra,* p. 4, conferred authority on Commodity "to make final and conclusive settlement and adjustment of any claims by or against [it]." Section 4 (k), in contrast to Section 4 (c), contains no limitations period and has been administratively construed as permitting payment of claims filed against

Commodity even after Section 4 (c)'s time bar has run. See *e. g.*, 41 Op. Atty. Gen. No. 15.

That Congress does not consider the term "suit" to embrace administrative settlement and adjustment is further demonstrated by the enactments relating to contractual claims against the Government generally. Suit on such a claim must under the Tucker Act be brought within six years of the accrual of the cause of action. 28 U. S. C. 2501. Administrative allowance, however, is permitted for four additional years, *i. e.*, if the claim is filed within ten years of its accrual. 31 U. S. C. 71a, 237.[1]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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[1] Petitioner's reliance (Pet. p. 7) on *United States* v. *Lindsay*, 346 U. S. 568, is entirely misplaced. The single question there was whether Section 4 (c) barred the institution of *suit* by the Government on a Commodity claim more than six years after the accrual of the cause of action, but less than six years from the effective date of the Charter Act. In holding in the affirmative, this Court did not consider, let alone decide, the question here involved. Further, unlike this case, the Commodity claim in *Lindsay* was not grounded upon the submission to Commodity of an excessive bill, and the payment of that bill upon presentation.

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